

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 2658 of 1996

Between:

Kota Hari Prasad S/o. Sreeramulu
r/o. Visadala, Medikondur Mandal, Guntur District.

..... PETITIONER

AND

- 1 The Govt. of A.P. rep. by Secretary, Social Welfare
Department, Secretariat Buildings, Hyderabad.
- 2 The District Collector (S.W.Wing),
Guntur, Guntur District.
- 3 The Revenue Divisional Officer, Guntur Division, Guntur,
Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the respondents 2 and 3 to acquire the petitioner's land in an extent of Ac.6.95 cents covered by Govt. Dry.S.No.293 of Visadala (v), Medikondur Mandal, Guntur District in pursuance of the 2nd respondent's gazette Notification No. XXIII dated 26-11-94 and declaration dated 30-11-1995 as null and void, arbitrary, illegal and contrary to the provisions of the Land Acquisition Act and the Rules made thereunder and direct the respondents not to acquire the petitioner's land.

Counsel for the Petitioner:MR.G.KRISHNA MURTHY, Advocate

Counsel for the Respondent NoS.1 TO 3.: GP FOR LAND Acquisition

The Court made the following ORDER:

This Writ Petition is filed, seeking Writ of Mandamus, to declare acquisition of the land of the petitioner, admeasuring Ac.6.95 cents in Survey No. 293 of Visadala Village, Medikondur Mandal, Guntur District, pursuant to the Gazette Notification and declaration published on 26-11-1994 and 30-11-1995 respectively, as illegal and arbitrary.

The above said extent of land was notified for providing house sites to the weaker sections of the society, by issuing notification under Section 4(1) of the Land Acquisition Act, 1894, on 26-11-1994. The petitioner was issued notice in proceedings Rc.No.1167/94/K, dated 24-12-1994 under Section 5-A of the Land Acquisition Act, 1894, inviting objections for the proposed acquisition and in the said notice, enquiry date was notified as 27-1-1995.

Sri G.Krishna Murthy, the learned Counsel for the petitioner submits that no valid enquiry was conducted though the petitioner has filed objections on 2-1-1995. It is submitted by the learned Counsel for the petitioner that though enquiry date was notified as 27-1-1995, after filing objections on 2-1-1995, no enquiry was conducted on 27-1-1995, but, subsequently, enquiry was conducted without notice and opportunity to the petitioner.

In the counter affidavit filed on behalf of the respondents, it is stated that the respondents have acknowledged the objections filed by the petitioner on 2-1-1995. But, there is no indication of issuance of any notice to the petitioner for the enquiry conducted on 28-7-1995.

Section 5-A of the Land Acquisition Act, 1894 reads as follows:

“Section 5-A: Hearing of Objections:

1. Any person interested in any land which has been notified under Section 4, Sub-section (1), as being needed or likely to be

needed for a public purpose or for a company may within thirty days from the date of publication of the notification of causing public notice under the said sub-section object to the acquisition of the land or any land in the locality, as the case may be.

2. Every objection under sub-Section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either make report in respect of the land which has been notified under Section 4, Sub Section (1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of proceedings held by him for the decision of the Government. The decisions of the appropriate Government on the objection shall be final

3. Xxxx xxxxx xxxxxxxx

Xxxxx xxxxx xxxxxxxx”

In this case, though enquiry was not dispensed with, but, in spite of objections filed by the petitioner for the proposed acquisition, no valid enquiry was conducted as per the date notified in the notice issued under Section 5-A of the Land Acquisition Act, 1894. Though, initially notice indicating date of enquiry as 27-1-1995 was issued and the petitioner has filed objections to the notice dated 24-12-1994, on 2-1-1995, no enquiry was conducted on 27-1-1995. On the other hand, the respondents have inspected the land of the petitioner for acquisition on 28-7-1995 and prepared report as required under Section 5-A(2) of the Land Acquisition Act, 1894. Once objections are filed as per the provisions under Section 5-A(1) of the Land Acquisition Act, 1894, the petitioner is entitle to notice of enquiry as specified under Section 5-A(2) of the Act. In this case, though the petitioner has filed objections, without hearing the said objections and issuing prior notice, enquiry report is prepared and consequently declaration is published. In that view of the matter, declaration in proceedings Rc.No. 389/94-W3,dt. 25-11-1995, published in the Guntur District Gazette on 30-11-1995, is liable to be set aside.

The Writ Petition is allowed, and, declaration in proceedings Rc.No. 389/94-W3, dt.25-11-1995, published in the Guntur District Gazette on 30-11-1995 is set

aside. The respondents are directed to conduct enquiry afresh on the objections filed by the petitioner by issuing prior notice and take further steps accordingly. No order as to costs.

7th February, 2005.

Msnr.

That Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the seventh day of February, Two Thousand and five.

To

- 1 The Secretary, Social Welfare
Department, Govt. OF A P. Secretariat Buildings, Hyderabad.
- 2 The District Collector (S.W.Wing),
Guntur, Guntur District.
- 3 The Revenue Divisional Officer, Guntur Division, Guntur,
Guntur District
4. Two CCs to the Govt.Pleader for Land Acquisition, High Court of AP, Hyderabad
(OUT)
5. Two CD copies.